

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**ERIC WHITE, on behalf of himself and all
others similarly situated,**

Plaintiff,

v.

**UNITED AIRLINES, INC. and UNITED
CONTINENTAL HOLDINGS, INC.,**

Defendants.

Civil Action No. 1:19-cv-00114

Judge Charles Norgle

**MOTION OF DEFENDANTS UNITED AIRLINES, INC. AND UNITED
CONTINENTAL HOLDINGS, INC. TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants United Airlines, Inc. (“United”) and United Continental Holdings, Inc. (“UCH”) move to dismiss Plaintiff’s Amended Complaint in its entirety. Taking all well-pleaded allegations as true, Plaintiff’s Amended Complaint fails for several reasons.

First, in Count I, Plaintiff argues that because United provides its employees with paid jury duty and sick leave, USERRA § 4316(b)(1) requires that it provide paid “short-term” military leave as well. Count I should be dismissed as a matter of law because USERRA does not provide for the paid military leave Plaintiff seeks. Count I should be dismissed for the separate reason that UCH is not Plaintiff’s employer within the meaning of USERRA. *Second*, Count II should be dismissed because Plaintiff did not plausibly allege a violation of 38 U.S.C. § 4316(b)(1), where he has not identified any participant of the UCH Profit Sharing Plan who was “credited” for unpaid leave in the calculation of their profit sharing award, and thus cannot show he was treated differently than similarly-situated Plan participants. *Third*, Count III should

be dismissed because, as established by the allegations of Plaintiff's Amended Complaint and the documents incorporated therein, the UCH Profit Sharing Plan is not an employee pension benefit plan subject to USERRA § 4318.

For these reasons, as detailed in their Memorandum of Law in Support of the Motion of Defendants United Airlines, Inc. and United Continental Holdings, Inc. to Dismiss, Defendants request that this Court dismiss Plaintiff's Amended Complaint with prejudice.

Dated: April 19, 2019

Respectfully submitted,

s/ Michael J. Gray

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*Attorneys for Defendants United Airlines, Inc.
and United Continental Holdings, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2019, I electronically filed the foregoing *Motion of Defendants United Airlines, Inc. and United Continental Holdings, Inc. to Dismiss Plaintiff's Amended Complaint* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

s/ Michael J. Gray

One of the Attorneys for Defendants